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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/039,202	03/13/1998	DAVID ROBERT WESTON	GIL4-BC72	9300

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EXAMINER
SALCE, JASON P

ART UNIT	PAPER NUMBER
2611	19

DATE MAILED: 04/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/039,202	WESTON ET AL.	
	Examiner	Art Unit	
	Jason P Salce	2611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3 and 5-11* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3 and 5-11* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 1/22/03 have been fully considered but they are not persuasive.

Applicant argues that Lappington does not show or teach a way of monitoring the data for any purpose. The examiner states in the previous office action that Lappington fails to teach a method of monitoring the data being transmitted *to determine a satisfactory predetermined time period*. Lappington teaches monitoring data at Column 5, Lines 59-61 for monitoring which program is being selected by a user. Also, Lappington teaches a polling script developed by the system to query users and send results back to the system to determine preferred programming (see Column 10, Lines 41-55). Both embodiments teach a method of monitoring, but fail to teach using these methods of monitoring to determine a satisfactory predetermined time period.

Applicant continues to argue that Lappington fails to teach adjustment of the priority rating of data so as to insure that the data is received within a required period of time. Examiner notes that "priority *rating* of data" is not stated in the claim limitations, therefore this argument will not be considered. Lappington teaches adjusting the priority of data at Column 6, Lines 14-22 as stated in the previous Office Action.

Applicant continues to argue that a showing, teaching or motivation for providing a method of monitoring the data being transmitted in order to determine whether the data will be transmitted within its required predetermined time period. Examiner notes that a showing and a teaching are one in the same. As stated in the previous Office

Action and in the arguments above, Lappington teaches monitoring data being transmitted, but fails to teach monitoring the data being transmitted to determine a satisfactory predetermined time period. Lyons discloses priority lists that are maintained, which contains entries that contain data representing each component signal (Column 3, Lines 1-4). According to this data, a packet stream is generated in response to the priority levels in the lists, and that the priority list is *modified in such a manner as to ensure that a packet containing data from the opportunistic data component signal is generated with sufficient time regularity to guarantee that the block of data is transferred within the predetermined time period* (see Column 3, Lines 4-10). The motivation is stated in Lyons as "to guarantee transmission of a predetermined amount of data carried by a component signal within a predetermined time period" (see Column 1, Lines 11-13).

Applicant continues to argue that the Lyons system does not monitor data to be transmitted as required by the present invention, and cites numerous examples in Lyons, but does not show how they differ from the present invention. Also, the examiner still feels that the broad claim limitations are met by the combination of Lappington and Lyons.

Therefore, the rejection presented in the previous Office Action is repeated, with a more detailed explanation of how the limitations cover all the claim limitations in the present invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-2, and 6-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lappington et al. (U.S. Patent No. 5,734,413) in view of Lyons (U.S. Patent No. 5,864,557).

Referring to claim 1, Lappington discloses an interactive television system 10 that contains a data insertion system that consists of a method for transmitting data relating to a number of different categories (Column 4, Lines 10-33), and shows transmission from a central location to at least one remote receiver (Column 3, Lines 12-14 and Column 5, Lines 52-53 and Figure 1), a method of allocating a priority to the data in accordance with the category, with each priority defining a relationship between categories of data, and transmitting the data in a manner determined by the allocated priorities (Column 6, Lines 17-22), and transmitting the data in a manner determined by the allocated priorities (Column 5, Lines 50-53). Lappington teaches receiving data by at least one remote receiver (see element 26 in Figure 1). Lappington teaches monitoring data being transmitted (see Column 5, Lines 59-61 and Column 10, Lines 41-55) and assigning priorities to the data being transmitted (Column 6, Lines 17-22), but fails to teach a method of monitoring the data being transmitted to determine a satisfactory predetermined time period and changing the priority of the monitored data, which has been determined that the data will be received outside the satisfactory time

period so that it can transmit the data to be received within the satisfactory predetermined time period.

Lyons teaches changing the priority of the monitored data, which has been determined will be transmitted so as to be received outside the satisfactory time period (see Column 9, Lines 11-25 in claim 7) so that it will be transmitted to be received within the said satisfactory predetermined time period (claim 7, Column 9, Lines 3-8). The examiner also cites that the processor and scheduler (elements 30 and 50 in Figure 1) are responsible for the monitoring and changing of the priority data (see Column 3, Lines 24-35). The schedule 30 scans the priority lists from top to bottom (Column 4, Lines 65-67 and Column 5, Line 1), and the processor 50 controls which of the list memories is processed by the scheduler 30, while updating the other (Column 5, Lines 52-54).

The examiner also notes that Lyons is mainly concerned with transmitted packetized data, and that Lappington states that besides transmitting data within a VBI signal, that data can be transmitted in packetized form as well (Column 8, Lines 47-51).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the transaction based interactive television system, as taught by Lappington, utilizing the transport stream encoder, as taught by Lyons, for the purpose of guaranteeing transmission of a predetermined amount of data carried by a component signal within a predetermined time period (Column 1, Lines 11-13 of Lyons).

Claim 2 corresponds to claim 1, with the additional limitation of having the data be transmitted in an order determined by the priority allocated. Lappington teaches low and high priority to determine when data will be transmitted (Column 6, Lines 14-22).

Claim 6 corresponds to claim 1, with the additional limitation of a category corresponding to game playing data. Lappington discloses mini-games that allow the viewer to play self-contained games (Column 10, Lines 63-67).

Claim 7 corresponds to claim 1, with the additional limitation of transmitting data within a television signal. Lappington discloses the data insertion control 14, which controls the insertion of interactive data preferably into the vertical blanking interval of the incoming television signal (Column 8, Lines 17-20).

Referring to claim 8, see rejection of claim 1.

Claim 9 corresponds to claim 8, with the additional limitation of at least one category being an interactive service. Lappington discloses a transaction based interactive television system that can create, encode, transmit and present sophisticated interactive programs (Column 3, Lines 11-14).

Referring to claim 10, see rejection of claim 1.

Claim 11 corresponds to claim 10, with the additional limitation of combining data with a TV signal for transmission to at least one remote receiver. Lappington discloses an insertion card 20 that adds the interactive data to the VBI lines of the television signal 16 (Column 8, Lines 40-41), and set-top device 28 that receives the encoded TV signal and strips out the interactive data (Column 8, Lines 65-66).

3. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lappington et al. in view of Lyons in further view of Gasztonyi et al (U.S. Patent No. 5,686,961).

Lappington and Lyons teach all the limitations in claim 1. Lappington and Lyons fail to teach compressing the data in a category if a certain priority has been allocated. Gasztonyi teaches a video transmission system that is made aware of the progress of the transmission of video image data and of compression and priority level (Column 2, Lines 59-63). At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the interactive television system using the transport stream encoder, as taught by Lappington and Lyons, utilizing the video image data reduction and prioritization method, as taught by Gasztonyi, for the purpose of reducing storage and transmission requirements (Column 1, Lines 54-55 of Gasztonyi).

4. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lappington in view of Lyons in further view of Keshav (U.S. Patent No. 5,627,970).

Lappington and Lyons teach all the limitations in claim 1, as well as interactive data that could be transmitted using digital packets (Column 8, Lines 47-51), where the data can be script data, cross-promotional data, or mail and bulletin board data (Column 6, Lines 19-22). Lappington and Lyons fail to teach a method for monitoring a packet to be sent, and manipulating a packet with high and low priority data. Keshav teaches a transmission queue that is partitioned into a high priority zone at one end and a low priority zone at the other (Column 8, Lines 35-39). Application data packets are stored at the tail of the low priority zone, while data packets awaiting retransmission are stored

at the tail of the high priority zone (Column 8, Lines 39-42). The destination node is required to buffer received out of sequence data packets until the data packets can be processed or transferred to a third-party recipient in order (Column 8, Lines 42-46). At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the interactive television system using the transport stream encoder, as taught by Lappington and Lyons, utilizing the transmission queue, as taught by Keshav, for the reduction of buffer space needed by the destination node (Column 8, Lines 46-48 of Keshav).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason P Salce whose telephone number is (703) 305-

1824. The examiner can normally be reached on M-Th 8am-6pm (every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Faile can be reached on (703) 305-4380. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-5359 for regular communications and (703) 872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.

March 31, 2003

ANDREW FAILE
SUPERVISORY PATENT EXAMINER
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